

Department of Public Health
and Human Services

Section:
CASE MANAGEMENT

FOOD STAMP PROGRAM

Subject:
Requesting a Fair Hearing/
Continuation of Benefits

Supersedes: FS 1506-1 (10/01/05)

References: 7 CFR 273.15
42 CFR 431.200 through .246
ARM 37.5.304; .307; .313; .316; .318; .322; .325; .328; .331; .334; .503;
.505
ARM 37.82.101
ARM 37.78.102

GENERAL RULE--A fair hearing will be granted to any applicant who requests a hearing because his/her application is denied or is not acted upon with reasonable promptness and to any participant who is aggrieved by any action resulting in reduction, discontinuance, termination, overpayment, or a determination establishing conditions for the receipt of benefits. The hearing request must be submitted, in writing, within 90 days of the Department's action notice.

≥ **NOTE:** Food Stamp applicants/participants may make an oral request for a hearing. County staff will then immediately forward the request to the Office of Fair Hearings, Helena, via e-mail or hard copy memo. The request must include the applicant/participant's name, address, phone number and the adverse action reason (e.g., such as closure of food stamp benefits).

A hearing request is defined as a clear expression by the applicant/participant (claimant), or his/her authorized representative acting for him/her, that he/she wants the opportunity to present his/her case to a higher authority. The freedom to make such a request will not be limited or interfered with in any way. The Department may assist the claimant to submit and process the request.

State law grants any 'real party in interest' (e.g., medical providers) the right to request a fair hearing and/or appeal a hearing decision.

The individual's fair hearing rights, how to request a hearing and/or continuation of benefits pending the hearing decision and repayment, if the decision is in favor of the Department are stated on the reverse side of the TEAMS notice informing the individual of the Department's action.

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1. The Food Stamp household may request a fair hearing related to 'restoration of lost benefits' for benefits which were lost more than 90 days but less than one year prior to the hearing request.
2. The Food Stamp household may request a fair hearing to dispute its current level of benefits at any time within the certification period.

EXPEDITED

Expedited hearings may be granted to households who request a hearing, but plan to leave Montana before a decision can be made under regular time frames (FS 1506-3).

**HEARING REQUEST
DENIAL/ DISMISSAL**

A hearing may be denied or dismissed when:

1. The hearing request is withdrawn in writing by the individual (or representative acting on his/her behalf);

NOTE:

For the Food Stamp Program and TANF cash assistance, the hearing request may also be withdrawn verbally by the individual (or their representative acting on his/her behalf at any time). When a fair hearing is withdrawn verbally, the OPA must:

- a. Contact the Office of Fair Hearings (Barbara Conrady and Bonnie Brown) by phone or e-mail the same day. A confirmation of dismissal will be issued by the Office of Fair Hearings.
- b. Enter a TEAMS case note the same day stating that the individual provided a verbal request to withdraw the fair hearing.

The household has one opportunity to reinstate the fair hearing after withdrawing their request. Within 10 days of the confirmation of dismissal, the household may make a request for reinstatement directly to the Office of Fair Hearings. However, when an oral reinstatement of the fair hearing is requested at the county level, the county office must contact the Office of Fair Hearings by phone or e-mail the same day. Case notes of the oral request for reinstatement of the fair hearing must be entered the same day as the request. The

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Office of Fair Hearings will follow up with notification of reinstatement.

2. The individual (or representative) fails to appear at the hearing without good cause;

NOTE: The Hearing Officer may reschedule the hearing if the claimant shows good cause for failure to appear. A hearing cannot be dismissed when a claimant does not appear for an Administrative Review.

3. The request is received by the Department more than 90 days after the date the notice was mailed;
4. Either federal or state law requires automatic benefit changes (unless the issue is incorrect benefit adjustments); or,
5. The Hearing Officer does not have jurisdiction over the subject matter or the appeal procedure.

When a hearing request is determined abandoned because the claimant failed to appear or request reschedule, a notice of dismissal or denial (in which the claimant is offered the opportunity to explain his/her failure to appear), is sent to the claimant by the Hearing Officer.

≥HEARING POSTPONEMENT

The household may request and is entitled to receive a postponement of a scheduled hearing. The postponement cannot exceed 30 days unless agreed to by both parties. The Hearings Officer's decision will be made within 60 days from the date of the hearing request.

FOOD STAMP PROGRAM EXCEPTION: For Food Stamps only, the time limit for action on the decision may be extended for as many days as the hearing is postponed. For example, if the household postpones the hearing for 10 days, the household must be notified of the hearing decision within 70 days from the date of the hearing request.

AGENCY CONFERENCES

For the Food Stamp Program, a conference will be offered to households that contest a denial of expedited service. Households will be advised that use of an agency conference is optional and that it will in no way delay or replace the fair hearing process. The agency conferences may be attended by the OPA Case Manager responsible for the agency action, and will be attended by a supervisor and/or the director, and by the household and/or its representative. An agency conference may lead to an informal resolution of the dispute. However, a fair hearing must still be held unless the household makes a written or oral withdrawal of its request for a hearing.

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An agency conference for households contesting a denial of expedited service will be scheduled within two working days, unless the household requests that it be scheduled later.

CONTINUATION OF BENEFITS

A hearing request filed within the period between the date of the TEAMS notice of action and the effective date of the action may result in continuation (reinstatement) of benefits until a final hearing decision is rendered. Benefits will be continued until the hearing decision unless:

1. The claimant specifically requests that continued benefits not be paid pending the hearing decision;

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NOTE: For Food Stamps and Medicaid, when a hearing request does not positively indicate the household has waived continuation of benefits, continue benefits on the eligibility determination authorized immediately prior to the adverse action notice, if the hearing request was received no later than the date on which the adverse action took effect.

2. The claimant does not turn in the request by the date on which the adverse action took effect.

NOTE: If the notice of adverse action period ends on a weekend or holiday and a request for a fair hearing and continuation of benefits is received the day following the weekend or holiday, the State agency shall consider the request timely.

3. For TANF, the claimant does not specifically request continued benefits; or,
4. With the exception of the Food Stamp Program, it is determined that the sole issue is one of State or Federal law or policy.

The Department (OPA) must clearly and thoroughly explain the claimant's responsibility to repay benefits received during the hearing process if the adverse action is upheld.

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Continue benefits if all financial and non-financial requirements are met with the exception of the issue in dispute until a hearing decision is rendered and the claimant and the Department have exhausted the available administrative remedies which includes the appeal to the Board of Public Assistance or the time for appeal to the Board has passed without either the claimant or the Department appealing to the Board.

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Changes reported during continuation of benefits should be acted upon according to each program's change reporting policy. (See 'Reduction of Continued Benefits' below).

If the decision is in favor of the Department, recovery of benefits issued during the continuation period must be initiated, if appropriate, and/or the adverse action imposed.

REDUCTION OF CONTINUED BENEFITS

Once benefits are continued or reinstated, do not reduce or terminate benefits prior to the official hearing decision unless:

1. Eligibility ends for failing to meet any other eligibility requirements or time-limits are reached;
 - a. ABAWD time limits have expired.
 - b. The certification period expires and the household fails to complete the certification process for ongoing benefits.
2. A change affecting the participant's eligibility or basis of issuance occurs while the hearing decision is pending and the filing/assistance unit fails to request a hearing after the subsequent notice of adverse action;
3. The Hearing Officer makes a preliminary determination (in writing and at the hearing) the sole issue is one of State or Federal law or policy and no issue of improper benefit calculation, misapplication, or misinterpretation of State or Federal law or policy exists; or,
4. A mass change affecting the participant's eligibility or benefit level occurs while the hearing decision is pending. (See FS 1501-2, 'Mass Change'.)

MASS CHANGE CONTINUATION

A mass change occurs when changes in either State or Federal law require automatic benefit adjustments for classes of recipients. When benefits are reduced or terminated due to a mass change, continue benefits at the prior amount only if the issue being contested is that:

1. Eligibility or benefits were improperly computed; or,
2. Federal law or regulation was misapplied or misinterpreted.

NOTE: A **Food Stamp** fair hearing cannot be dismissed solely because an issue is related to a mass change.

PROCEDURE

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Responsibility	ACTION
OPA Staff:	<ol style="list-style-type: none"> 1. Assist the applicant/participant in submitting the hearing request, if necessary. 2. If the request is submitted to the county office, immediately forward it to the Office of Fair Hearings, Central Office. 3. Advise the claimant of any free legal services which may be available (this information is on the 'Request for Fair Hearing' form). 4. Upon request, make available without charge the specific materials (including the hearing rules) necessary for a claimant or his/her representative to prepare for the administrative review and/or hearing.
Claimant/ Representative:	<ol style="list-style-type: none"> 5. Complete the 'Request for Fair Hearing' form or write a similar request for a hearing. Include the following information on the request: <ol style="list-style-type: none"> a. To which program (e.g., Food Stamps, TANF Cash, Medicaid, etc.) does the request relate; <p>NOTE: Food Stamp applicants/participants may make an oral request for a hearing. County staff will then immediately forward the request to the Office of Fair Hearings, Helena, via e-mail or hard copy memo.</p> <ol style="list-style-type: none"> b. What adverse action was taken; and, c. The client's name, address and phone number. 6. Mail the request to: <p>The Department of Public Health and Human Services Office of Fair Hearings P. O. Box 202953 Helena, Montana 59620-2953</p>
Office of Fair Hearings:	<ol style="list-style-type: none"> 7. Grant a hearing to any applicant/participant or representative (except for a TANF Cash and Family Related Medicaid Programs hearing request) when either State or Federal law requires automatic grant adjustments for specific groups of clients.
County Staff:	<ol style="list-style-type: none"> 8. Reinstate and/or continue benefits as appropriate.

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9. Advise the claimant of the requirement to repay all benefits received while awaiting the hearing decision, if the decision is not favorable.
10. Upon receipt of the notification from the Hearing Office of a hearing request, schedule an administrative review within the stated time lines (FS 1506-2).

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